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SUPREME COURT OF THE UNITED STATES.

No. ~~184.~~ 486. 50.

JOHN RANDALL, JR., and LETITIA M. RANDALL, his wife, APPELLANTS,

vs.

JACOB C. HOWARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF MARYLAND.

GIDEON, Printer, 511 Ninth Street, Washington, D. C.

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GIDEON, Print.

THE UNITED STATES OF AMERICA.

District of Maryland, to wit:

At a Circuit Court of the United States, for the Fourth Circuit, in and for the Maryland District, begun and held at the City of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-nine,

Present—The Honorable
William F. Giles, Judge of Maryland District.
William Meade Addison, Esq., Attorney.
John W. Watkins, Esq., Marshal.
Thomas Spicer, Clerk.

Among other were the following proceedings, to wit:

John Randall, Jr., and Letitia M. Randall, his wife,
vs.
Jacob C. Howard.

Be it remembered, that heretofore, to wit: on the eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-nine, the said John Randall, Jr., and Letitia M. Randall his wife, by Charles F. Mayer, Esquire, their solicitor, filed in the Circuit Court here their bill of complaint against the said Jacob C. Howard, in the words and of the tenor following, to wit:

[Bill.]

To the Honorable the Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland, sitting in equity.

Complaining, show to your honorable court, John Randall, Jr., and Letitia M. Randall his wife, citizens of the State of New York, that by deed, dated the twenty-sixth day of February, in the year eighteen hundred and fifty-six, and recorded among the land records of Cecil county, in the State of Maryland, in Liber H. H. M., No. 7, folio 9, &c., made by said John and Letitia to John M. C. Randel; there were vested in John M. C. Randall in trust for said Letitia, for her life, and upon other trusts in said deed limited, the several pieces of land in said county, containing in all fourteen hundred and sixteen acres, more or less, in said deed particularly described; a new deed, for correcting the other in point of acknowledgment, having been executed on the same trusts, between the same parties, dated the tenth day of July, in the year 1856. And your Orator

and Oratrix state, that one of the said trusts grants to said Letitia the power to revoke the specified trusts of said conveyance, and to limit other such trusts, "and, also, a trust empowering said Letitia to sell at her discretion the said lands, or any part thereof. Your Orator and Oratrix now state, that your Orator being indebted to a certain Jacob C. Howard, a citizen of the State of Maryland, residing in Cecil county aforesaid, upon a bond in the penal sum of fourteen thousand dollars, bearing date the sixth day of April, in the year eighteen hundred and fifty-four, conditioned for the payment, with interest from said date, for the sum of seven thousand dollars, on or before the seventh day of April, in the year eighteen hundred and fifty-five. Your Orator and Oratrix, to secure payment of that debt, conveyed on mortgage, by deed dated the sixth day of April, eighteen hundred and fifty-four, to said Howard, two tracts or parcels of land (parts of the land conveyed by said deed of trust) more particularly in said deed of mortgage described, being the two parcels of land which, respectively, were conveyed to said John Randall, Jr., by James A. Bayard, and his wife, by deed dated the 30th July, 1836, and recorded among the land records of Cecil county aforesaid, in Liber J. S., 37, folio, 342, &c., and by deed of George Craig, and his wife, dated the 24th March, 1838, and recorded as aforesaid, in Liber J. S., No. 41, folio 82, &c. And your Orator and Oratrix state, that when the said deed of mortgage was executed as aforesaid, the lands thereby conveyed were held in trust for said Letitia's benefit for life, and on all the trusts limited in said deed of trust of the 26th February, 1856.

Your Orator and Oratrix now state, that in the year eighteen hundred and fifty-five, and soon after said mortgage-claim became payable, the said Howard, by his counsel, proposed filing an amicable bill in equity for a decree to sell, ultimately as might be desired by all parties concerned, or as might become unavoidable, the said mortgaged estate, for paying the said claim, and that the proposal was urged under representation to your complainants on the part of said Howard, that a sale under a decree, if it should become thus necessary, finally would be more advantageous, that if your Oratrix were for such object herself to make sale of the estate. And your Orator and Oratrix state and charge, that persuaded by such profession and representation, that acceded to the proposed action, and, on a bill being filed, answered without making any objection or defence (upon any ground, and on that especially, that might have been available to your Oratrix, under the tenor and limitations of the deed of trust, subsisting when she united in the said mortgage conveyance, the benefit of which grounds of defence your Oratrix now here claims.) And your Orator and Oratrix state, that in consequence of their said assenting answer, a decree by the Circuit Court for Cecil county, was passed on the fifteenth day of October, in the year eighteen hundred and fifty-five, for the sale of said

mortgaged property, for paying said mortgaged claim and interest thereon, and, also, a further sum, payable by your orator, and, by consent, brought within the said decree of six hundred and eight dollars, bearing interest from the ninth day of October, in the year eighteen hundred and fifty-five, the said decree giving time to your Orator and Oratrix, until the ninth day of October, in the year eighteen hundred and fifty-six, to pay said sums and interest, or bring the same into court.

And your Orator and Oratrix state and charge, that about April, in the year eighteen hundred and fifty-six, in consequence of a fraud being attempted against your complainants, through devices involving the possession of part of the land mortgaged as aforesaid, it was deemed proper for counteracting said fraud, that, on a petition to be filed by said Howard in the case of said decree, your complainants should assent to a sale, (under friendly arrangements between said Howard, and then rendering such sale merely formal and nominal,) taking place forthwith, instead of being deferred to the period (the next October) provided by the decree.

And your complainants aver, that under their answer to such petition, which was filed, the time for the sale was, by decree, thus changed, and under the friendly arrangement and understanding aforesaid, and which was to the effect that said Howard was to become purchaser of said mortgaged property, at a sale under the decree, but really to only hold it for securing the payment of the mortgage and decreed indebtment as aforesaid, upon satisfying which the property, it was understood should enure, as provided by the terms of the said trust, for the benefit of your Oratrix.

And your complainants state and show, that a sale was, under the arrangement aforesaid, accordingly advertised to take place on the thirteenth day of June, in the year eighteen hundred and fifty-six, but was deferred; and then was advertised to take place on the fourteenth day of October, in the year eighteen hundred and fifty-six, this delay according in consequence of the intervention, by injunction, of the party attempting the fraud aforesaid. And your complainants state and charge, that on the last-mentioned day, the mortgaged property was, by the trustee appointed by the decree, offered for sale—the arrangement aforesaid continuing between your complainants and the said Howard.

And your complainants state, that at the said sale, the said Howard, there being no other bidder, became ostensibly the purchaser of the mortgaged estate, at the bid of seventeen thousand dollars, a sum which your complainants aver is so far below the true and available value of the property, which was not exceeded by any other bid above said Howard's, because of its being understood at the sale, as your complainants aver and charge, that the sale was meant to be only formed, and not, in fact, to divest the estate of your Oratrix.

And your Orator and Oratrix now state and charge, that after said Howard became thus the apparent purchaser, and the sale was reported, your complainants were solicited, on the part of said Howard, to forbear interposing objections to the final ratification of the sale, and upon the terms and assurances hereinbefore mentioned, that the property should, notwithstanding a final ratification of the sale, stand but as a security for the indebtment aforesaid, declared by the decree, and it was then understood that said indebtment should be paid by instalments, the first being to be of four thousand dollars, payable on the fourteenth day of December, in the year eighteen hundred and fifty-six, and that on default of payment of any instalment, only so much of the mortgaged lands as would pay the same might be sold, and in parcels, and from the east end of the tract, and according to a plot of such manner of sale to be made by your Orator, the said Howard being, by the effect of these terms, constituted, as your complainants claim and charge, a trustee (subject to the charge of said indebtment) for benefit of your Oratrix.

And your Orator and Oratrix state and charge, that upon the said terms and understanding, and on their faith therein, they forbore all exceptions to the ratification of the said sale, (among which might have been successfully urged the low price, and, especially, as produced by the prevailing impremission aforesaid as to the intent and character of the sale, and, also, the selling of the whole land in a body, and without any map or plat thereof, in place of its being divided for sale by parcels, and also the requiring, as was done at the sale, of the whole of the purchase money to be paid at the time of sale, and not by instalments.)

And your complainants state, that under such circumstance it was that the sale was accordingly ratified finally.

And your Orator and Oratrix state and charge, that being prevailed upon by the counsel of said Howard, and in said Howard's behalf, to believe that to perfect the form of sale, the occupation kept by your Orator and Oratrix of the mortgaged land, must be made to conform to the ostensible title of the purchaser, by your complainants being put in the apparent relation of tenants to said Howard. Your Orator and Oratrix entered into a renting for a year, at a small rent, from said Howard, of said mortgaged lands.

And your Orator and Oratrix continued to occupy said property, dwelling thereon and cultivating it. And your Orator and Oratrix aver and charge that said Howard, having thus seemingly committed and implicated your complainants in an ostensible assurance of title to him in said mortgaged lands, he fraudulently determined to act toward your Oratrix as if he were absolutely the owner, and had, in fact, even fully paid all the said nominal purchase money of seventeen thousand dollars, and as if no equitable estate in the lands had resulted to, or continued to abide it, your Orator.

And your Orator and Oratrix state and charge, that the said Howard, proceeding in the course of this false pretention, and to perpetrate such fraud upon your Orator and Oratrix, and particularly upon your Oratrix, claims a right to sell said lands at his pleasure, as to price or purchaser, granting to your Oratrix, as the furthest favor, only the pre-emptionary privilege at the sum of seventeen thousand dollars, while, too, as your complainants aver and charge, that his extreme claim against them, or against your Orator, under the said decree, and including even claims not within the decree, does not exceed thirteen thousand five hundred dollars.

And your complainants state and charge, that to defraud them so as to succeed in said arbitrary exaction, and in repudiation of his said trust-relation to your Oratrix, the said Howard pretends that he is entitled to the amount of the difference between the said extreme indebtment and the said nominal purchase money, for alleged, but unspecified and merely pretended "*trouble and expense*" about the said mortgaged lands, arising, as he pretends, since his said ostensible purchase, all of which your complainants aver and charge is lent a fraudulent contrivance for his figuring, as the owner indefeasibly of the property, without in truth paying for it, if even any title as purchaser under said form of a sale could be supposed to have accrued to him.

And your Orator and Oratrix are informed and believe, and so charge, that thus usurping the absolute ownership, the said Howard, directly or through agents, is treating with others for the sale of said court, regardless of the equitable right of your Oratrix thereto.

And your Orator and Oratrix aver and charge, that the said Howard, pursuing his said fraud, your complainants were called on, at his instance, by his counsel, and by one of the parties treating with said Howard for purchase of the lands, and required to subscribe an agreement for confirming, according to the inequitable design of said Howard, just described, a title to said property, and for establishing him to have actually satisfied, as aforesaid, the said purchase money of seventeen thousand dollars, of which agreement (as to the body thereof) the writing now here exhibited, marked H, your complainants believe is a substantial copy, no counterpart thereof having, in the case of their lessee, been furnished to your Orator and Oratrix, or allowed to be made by them.

And your complainants charge, that said proposed agreement was obtruded and pressed on them urgently and peremptorily, and was, under threats, required to be executed, without affording your complainants any time for deliberation, and scarcely any opportunity to read it, and with declarations intimidating and distressing your Oratrix, and driving her in alarm, as with no other means of escape from calamities that at said Howard's hands were to fall on her, and her said husband, to sign the agreement so proposed to be extorted.

And she states and charges that she was thus forced to sign it.

And your Orator states and charges, that he at first refused to sign said agreement, but fearing that the agony of his wife, into which the urgency and threats applied to constrain her signature, and persisted in to extort your Oratrix had thrown her, would be fatal to her life, your Orator yielded to the solicitations of his wife, made to him in her terror, and in her dread of result from refusal to sign, and signed the agreement, thus coerced, by the violence brought in aid of the fraudulent purpose of said Howard.

And your complainants charge, that although that extorted agreement, framed and meant to involve your complainants in the recognition of said Howard's pretended title, and to divest your Oratrix of a large amount of money, cannot avail against your complainants, yet the said Howard relies and acts upon it as effectual to deprive your Oratrix of all her rights as equitable owner of the said land, or as entitled to any moneys therefrom.

And your complainants further charge, that a few days after the said extorted agreement to sign, was thus drawn from them, they were asked, on the part of said Howard, (and under the threats of expelling your complainants from the possession of the said land "*and of setting them into the woods*," to sign another writing as supplementary to said agreement; a copy of which your complainants here exhibit, marked I, as a part of this bill; but your complainants refused to sign that additional writing, and to thus cure the taint from extortion and fraud, attaching to said first pretended agreement, it being, as your complainants verily believe, the aim of said Howard, through said additional writing, to set up, as unobjectionable, the agreement that he had thus succeeded in procuring by threats and duress.

And your Orator and Oratrix now further charge, that thereafter and thereupon, the said Howard, in the course of his oppression of your Orator and Oratrix, and of his fraud upon the equitable interests of your Oratrix, suddenly and peremptorily notified your complainants to quit the said land, and yield possession to him; your complainants then dwelling upon the said lands as they had previously done, which notification the said Howard followed up by a colorable and irregular procees at law, through the sheriff of Cecil county, and succeeded (your complainants being undefended, and without the opportunity to protect themselves against said irregular proceedings,) in having your complainants forcibly ejected from the said land and their said dwelling, and immediately afterwards had furniture and personal property of your complainants seized and sold to pay the heavy costs of said irregular proceedings.

All of which actings of said Howard are against equity and conscience. In tender consideration whereof, and forasmuch as your Orator and Oratrix are remediless in the premises, save in equity, where trusts are enforced, and especially the equitable interests of married women are and fraud is prevented and defeated.

To the end, therefore, that the said Jacob C. Howard, who is a citizen of the State of Maryland, may answer the premises, and that said Howard may be debarred and restrained from selling or leasing, or in anywise disposing of, or acting with as if his property, the said mortgaged lands, and that the said lands may, by a decree of this honorable court be sold, and only so much thereof (and commencing at the east end of the tract) as may be needed to pay the claim of the said Howard, as the same shall be established, upon an account to be taken in this cause, and that your Oratrix may, upon satisfying such amount, have the said lands assured and released to her for her benefit and separate use, in fee simple, and that your complainants may have such other and further relief in the premises as to your honorable court may seem proper. May it please the court to grant to your Orator and Oratrix the writ of subpœna, directed to said Jacob C. Howard, commanding him, by a day assigned, to appear in this court to answer the premises, and therein to stand to and abide by such orders and decrees as to your honorable court shall seem proper.

CHARLES F. MAYER,
Solicitor for the Comp'ts.

Randall and Wife,
vs.
Howard.

Exhibit "H," with Bill.

Jacob C. Howard,
vs.
John Randall, Jr., and
Letitia M. Randall.

Circuit Court for Cecil County.
In Chancery.

Whereas, Jacob C. Howard, who became the purchaser of the mortgaged real estate in the proceedings in the above entitled cause, mentioned at and for the sum of seventeen thousand dollars, has agreed to reconvey to John M. Randall and Letitia M. Randall, the whole of the said property at and for the said sum of seven thousand dollars. We do, therefore, hereby authorize Francis A. Ellis, trustee in the above case, to pay out of that portion of the proceeds of the sale, made by said trustee to said Howard, which is distributed and allowed to us by the Auditor's Report and account filed in the above case, the following claims against us:

1st. A judgment in the Circuit Court for Cecil county, rendered at the April Term, 1856, in favor of said *Jacob C. Howard*, for $200, with interest from the 29th day of February, 1856, and costs.

2d. A judgment in favor of *Christopher Large*, for the use of Jacob C. Howard, rendered in the Circuit Court for Cecil county, at Term, 18 , with interest from 30th June, 1846, and costs.

3d. A judgment in favor of Gillespie & Zeller, in the same court, for $102 $\frac{52}{100}$, with interest from 10th of July, 1855, and costs.

4th. A promissory note to John C. Groome for $16 25, with interest from the 10th November, 1856.

5th. A mortgage and bond in favor of H. Paul Beck, of the City of Philadelphia, for $500, upon the real estate aforesaid, not recorded, with the interest and costs thereon.

6th. To Francis A. Ellis the sum of five hundred dollars, to indemnify him against liabilities which he has assumed for us; a surety upon three different magistrates' judgments against us.

{ One before Edmund Brown, Sen'r,
in favor of R. G. Reese.

{ One before Alexander P. Barwick, in favor of
and the other before Gilbert F. Cresfield, in favor of Richard
Wingate.

And after the full payment, satisfaction of all the said several claims, we do hereby authorize the said trustee to pay over to the said Jacob C. Howard all the rest and residue of our said distributive share of the proceeds of said sale, to the said Jacob C. Howard, in consideration of the trouble and expenses he has incurred in and about the said real estate since he purchased it, and in consideration of his reconveyance of the said real estate to the said Letitia M. Randall and *John M. Randall*, her son.

And we hereby forever fully release, acquit, and discharge the said Francis A. Ellis, trustee as aforesaid, of and for all further claim upon him for or on account of our said distributed share of the proceeds of sale, as shown by the report and account of the auditor aforesaid, hereby acknowledging to have received full satisfaction for the same.

Witness our hands and seals this day of April, A. D. 1858.

[SEAL.]

[SEAL.]

This copy, No. 2., was made at Philadelphia, 9th Sept'r, 1858, from copies No. 1, which was made from the original, 30th April, 1858.

Randall and Wife
vs.
Howard.
} Exhibit "I," with bill.

The seventeen thousand dollars, upon the payment of which Mr. Howard is willing to convey the property to Mrs. Randall, includes Mr. Howard's two mortgages.

Mr. Howard's judgment.
Christopher Large's judgment, use of Howard.
Gillasspie & Zeller judgment.
Groom's note, including his own and Mrs. Potts' claim.
Bryan's judgment, and Morris, Tasker & Morris' judgment.
H. P. Beck's mortgage, interest and costs.
F. A. Ellis' claims as surety for Randall and wife.
Cost and commissions of the case in chancery.
Ellis' commissions and fees.
Cash paid by Howard for surveying the land, and money loaned to Mrs. Randall, and his own additional charge.

N. B.—The amount retained to meet Beck's claim is $800. If the amount necessary to be paid falls below the $800, Mr. Howard will account to Mrs. Randall for whatever the difference may be.

This copy No. 2, was made at Philadelphia, 9th September, 1858, from copy No. 12, which was made at Elkton, from the original, 30th April, 1858.

Whereupon, on the same day, to wit, the eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-nine, the writ of the United States of America, of subpœna, issued out of the Circuit Court, here directed to the said Jacob C. Howard, in form following, to wit:

[Subpœna.]

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To Jacob C. Howard, of Cecil county, State of Maryland, Greeting:

[SEAL.] We command you, that all excuses and delays set aside, you be and appear at the clerk's office of the Circuit Court of the United States, for the Fourth Circuit, in and for the Maryland District, on the first Monday in March next, to answer unto the bill of complaint of John Randall, Jr., and Letitia M. Randall, his wife, citizens of the State of New York, in the said Court exhibited against you. Hereof you are not to fail, as you will answer the same at your peril.

Witness the Honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-eight.

C. F. M. Issued 18th day of February, 1859.

THOS. SPICER,
Clerk Circuit Court.

Afterwards, to wit: on the third day of March, in the year of our Lord one thousand eight hundred and fifty-nine, the said Jacob C. Howard appeared in the Circuit Court here, by Levin Gale and Alexander Evans, Esqs., his solicitors. And the said Jacob C. Howard, by his solicitors aforesaid, filed in the Circuit Court here, a demurrer to the said bill of complaint, in form following, to wit:

[Demurrer.]

To the Honorable the Judges of the Circuit Court of the United States, for the District of Maryland.

The demurrer of Jacob C. Howard to the bill of complaint of John Randall, Jr., and Letitia M. Randall against this defendant in this Court exhibited.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein set forth, doth demur thereto, and for cause of demurrer show,

That the said complainants have not in and by their said bill stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

That if the matters stated do give the complainant any cause of complaint against this defendant, the same should be heard, tried, and determined by the Circuit Court for Cecil county, and ought not to be inquired of in this Court.

That the bill of complaint seeks to invalidate, vacate, and annul the sale of the lands in the said bill of complaint mentioned and therein stated to have been made to this defendant under, and by virtue of a decree of the Circuit Court for Cecil county, sitting in equity in a cause therein depending between this defendant and the complainants; that the bill of sale alleges and charges that the sale was reported to said Court, and by the said Court was finally ratified, and the proceeds thereof were, by the authority of said Court, awarded to the persons in said bill named, and that the said matters and things, and the relief prayed with reference to the several matters in the said bill of complaint alleged, can only be reviewed or inquired into by the said Circuit Court for Cecil county, and ought not to be inquired into by this Court.

That the complainants by and in bill of complaint show, that the several matters and things alleged and charged in their said bill of complaint, and the various frauds in said bill alleged, in obtaining the several decrees and orders of the said Court, as set forth in the bill, were done, passed, and transacted in the said Circuit Court for Cecil county, or under and by virtue of its authority in a cause wherein said Court had full jurisdiction and authority over the said parties and over the several subject-matters, and this Court ought not therefore to inquire into the same.

That this Court ought not enjoin the acts and doings of the said Circuit Court for Cecil county, or interfere with or enjoin titles acquired under the same.

Wherefore, and for divers other errors and imperfections, this defendant demands the judgment of this Court whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained: and prays to be hence dismissed with his reasonable costs in this behalf sustained.

ALEXANDER EVANS,
LEVIN GALE,
Solicitors for defendant.

In my opinion the aforegoing demurrer is well founded in law.

LEVIN GALE.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered, that on this fourth day of April, in the year eighteen hundred and fifty-nine, before the subscriber, Clerk of the Circuit Court of the United States, for the District of Maryland, and ex-officio Commissioner, personally appeared Jacob C. Howard, and made oath on the Holy Evangely of Almighty God, that the aforegoing demurrer is not interposed for delay.

THOS. SPICER,
Clerk Circuit Court U. S. for Md. Dis., and Com. ex-officio.

And thereupon, on motion of the said Jacob C. Howard, by his solicitors aforesaid, it is ruled by the Court here, that the said John Randall, Jr., and Letitia M. Randall, his wife, give security for costs, or in default thereof, the bill will be dismissed.

Afterwards, to wit: on the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and fifty-nine, the said complainants gave security for the defendant's costs in form following, to wit:

[Security for Costs.]

John Randall, Jr. and Letitia M. Randall *vs.* Jacob C. Howard. } In the Circuit Court of the United States for the Fourth Circuit for the Maryland District. In Equity.

I, William H. McCullough, of Cecil county, Maryland, hereby, under the rule laid on the complainants to give security for the defendant's costs, bind myself for such costs as surety. And I authorize and request the clerk of the above-named Court, to enter me in this cause as surety for costs accordingly, in compliance with said rule.

WM. H. McCULLOUGH.

Cecil county, 26th April, 1859.

Witness, Edmund Brown, Sr., Justice of the Peace for Cecil county, Maryland.

I, Edward Brown, Sr., a justice of the peace for Cecil county, Maryland, certify to the Clerk of the Circuit Court of the United States for Maryland District, that I know Wm. H. McCullough, of said county, and his pecuniary circumstances, and that I believe him ample security for five hundred dollars at least.

EDMUND BROWN, Sr.,
Justice of the Peace above named.

Cecil county, 26th April, 1859.

Afterwards, to wit: on the second day of January, in the year of our Lord one thousand eight hundred and sixty, the Circuit Court here made and passed the following decree, to wit:

[Decree.]

Randall and wife *vs.* Jacob C. Howard. } In the Circuit Court of the United States for the District of Maryland.

This cause standing ready for hearing, and having been submitted on the bill and demurrer thereto, and the arguments of the counsel having been heard and considered, it is adjudged, ordered, and decreed by the Circuit Court of the United States for the District of Maryland, and by the authority of the said Court, that the demurrer to the bill of complaint in this cause, be and the same is hereby sustained, and the said bill is hereby dismissed with costs, this 2d day of January, 1860.

WILLIAM F. GILES.

From which said decree, so as aforesaid made and passed, the said John Randall, Jr., and Letitia M. Randall, his wife, by their solicitors aforesaid, *in open Court here*, prayed an appeal to the Supreme Court of the United States, to be held at the City of Washington on the first Monday in December next, and to them it is granted.

[Appeal Bond.]

Know all men by these presents, that we, John Randall, Jr., of the State of New York, and William H. McCullough, of Cecil county, in the State of Maryland, are held and firmly bound unto Jacob C. Howard, of Cecil county, in the State of Maryland, in the sum of five hundred dollars, to be paid to said Howard, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we hereby bind ourselves jointly and severally, our and our respective heirs, executors and administrators, firmly by these presents; sealed with our seals and dated the thirteenth day of January, in the year eighteen hundred and sixty.

Whereas, said John Randall, Jr., and Letitia M., his wife, heretofore, in the Circuit Court of the United States for the Fourth Circuit, in and for the Maryland District, filed their bill of complaint in equity, against said Jacob C. Howard, which said Howard demurred, on which demurrer the said Court has, at the November Term, of the year eighteen hundred and fifty-nine, of said Court, dismissed the said bill by its decree, from which decree the said complainants have prayed an appeal to the Supreme Court of the United States.

Now the condition of the above obligation is such, that if the said John Randall, Jr., and Letitia M., his wife, shall prosecute with effect their said appeal, and pay unto the said Jacob C. Howard, his heirs, executors, administrators, or assigns, their costs and charges decreed by said Circuit Court by its decree aforesaid, and also all such damages, costs, and charges as may be awarded to them by said Supreme Court, in case said complainants shall fail to make good their said appeal, then the above obligation to be void, otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered in presence of John Owens.

JOHN RANDALL, JR., [SEAL.]
WM. H. McCULLOUGH. [SEAL.]

State of Maryland, Cecil county. } To wit:

It is hereby certified, that on this thirteenth day of January, in the year eighteen hundred and sixty, before me, the subscriber, a justice of the peace of said State, in and for said county, appears

Wm. H. McCullough, of Cecil county, in the State of Maryland, and makes oath that he is the party signing and sealing as surety the above-written appeal-bond, and that over and above all his debts and liabilities, he is fully worth the sum of five hundred dollars, the penalty of said bond; and at the same time appears before me, James T. McCullough, of Cecil county, in the State of Maryland, and makes oath that he knows the said surety, William H. McCullough, and his pecuniary circumstances, and that he verily believes that said surety is amply sufficient for the penalty aforesaid, and worth more than five hundred dollars over his debts and liabilities.

JOHN OWENS, J. P.

State of Maryland, Cecil county. } To wit:

I, William H. Ricketts, Clerk of the Circuit Court for said county, hereby certify, that John Owens, who has signed the aforegoing certificate of the affidavits therein set forth, was, at the time of taking said affidavits, and administering the oaths therein mentioned, a justice of the peace of the State of Maryland in and for Cecil county, duly commissioned and sworn.

In witness whereof I hereto set my hand and the seal of said Court, this 13th day of January, in the year eighteen hundred and sixty.

[SEAL.]

WM. H. RICKETTS,
Clerk of Circuit Court for Cecil county.

Afterwards, to wit: on the fourteenth day of January, in the year of our Lord one thousand eight hundred and sixty, the said Jacob C. Howard, by his solicitors aforesaid, filed in the Circuit Court here, a petition in the words following, to wit:

[Petition.]

John Randall, Jr., and Letitia M. Randall, his wife, *vs.* Jacob C. Howard.

To the Honorable R. B. Taney and Wm. Fell Giles, judges of the Circuit Court of the United States for the District of Maryland.

The petition of Jacob C. Howard, the defendant above named, respectfully shows unto your honors, that upon the 16th day of December, 1859, after argument, the decision of the above case was postponed, to be given on the 2d of January, 1860, upon which day, by your honors, it was given, dismissing the bill against your petitioner, with costs.

That William McCullough was security for costs in the above cause, and although the same have been demanded of him, has not paid the same; that when the said costs were demanded of him he only answered, "I will see about it."

That the said William McCullough is now again offered to your honors as security in an appeal-bond to the Supreme Court of the United States.

And your petitioner respectfully represents to your honor, that he is informed and verily believes that the said William McCullough has no property in his own name, but (if he have any) only in the name of others, and that he ought not to be accepted as security.

Wherefore, your petitioner prays your honor, that the said bond of appeal, with said William McCullough as surety, may not be accepted until your petitioner has an opportunity to be heard concerning the same.

And as in duty, &c.

J. C. HOWARD.

State of Maryland, Cecil county. } To wit:

On the thirteenth day of January, 1860, before me, the subscriber, a justice of the peace of the State and county aforesaid, personally appeared Jacob C. Howard, and made oath that the matters stated in the foregoing petition are true to the best of his knowledge and belief.

Sworn before LEMUEL H. PURNELL.

State of Maryland, Cecil county. } *ss.*

I hereby certify, that Lemuel H. Purnell, Esq., before whom the aforegoing affidavit was made, and who has thereto subscribed his name, was, at the date thereof, a justice of the peace for Cecil county, in the then election district of said county, duly elected commissioner and sworn.

[SEAL.] In testimony whereof I hereto set my hand and affix the seal of the Circuit Court for Cecil county, this thirteenth day of January, A. D. 1860.

WM. H. RICKETTS,
Clerk Circuit Court for Cecil county.

Afterwards, to wit: on the fourth day of February, in the year of our Lord one thousand eight hundred and sixty, the said Jacob C. Howard, by his solicitors aforesaid, filed in the Circuit Court here a withdrawal of his objections to the appeal-bond aforesaid, in the words following, to wit:

[Withdrawal of Objections.]

Randall and wife
vs.
Howard.

In the Circuit Court United States, for the Maryland District.

The costs of the defendant in this Court having been paid, the defendant withdraws the objections to the appeal-bond heretofore filed.

LEVIN GALE,
Solicitor for defendant.

February 3d, 1860.

Thereupon, the Circuit Court here made the following endorsement on the said bond, "Approved 8th February, 1860, William F. Giles." Thereupon, it is ordered by the Court here, that the record and proceedings aforesaid, with all things concerning the same, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

In testimony that the aforegoing is a true copy of the originals on file among the records and proceedings of the Circuit Court aforesaid, I hereunto subscribe my name and affix the seal of the said Circuit Court, this twelfth day of April, in the year of our Lord one thousand eight hundred and sixty.

THOS. SPICER,
Clerk Circuit Court.

8/5

The controversy was fully
fer to the state court. If
the circumstances alleged
occurred - we must take
it to be true on this demur
that they did. Then the court
below was the tribunal to
correct the error.

IN THE SUPREME COURT OF THE UNITED STATES.

APPELLANTS' STATEMENT.

JOHN RANDEL, JR., AND
LETITIA, HIS WIFE,

vs.

JACOB C. HOWARD.

AN APPEAL FROM A DECREE OF THE CIRCUIT COURT FOR MARYLAND DISTRICT.

The controversy was fully
open to the jury. Did
the circumstances alleged
occur - we must take
it to be true on the demur-
that they did. Then the court
below was the tribunal to
correct the error.

IN THE SUPREME COURT OF THE UNITED STATES.

APPELLANTS' STATEMENT.

JOHN RANDEL, JR., AND
LETITIA, HIS WIFE,

vs.

JACOB C. HOWARD.

AN APPEAL FROM A DECREE OF THE CIRCUIT COURT FOR MARYLAND DISTRICT.

LUCAS AND SON, PRS. BALT.

JOHN RANDEL, JR.
AND
LETITIA M., HIS WIFE,
vs.
JACOB C. HOWARD.

IN THE
Supreme Court of the U. S.

On Appeal from a Decree of the Circuit Court for Md. District.

Appellants' Statement.

This is the case of a Bill in Equity demurred to and a Decree sustaining the Demurrer. The facts of the case, as shown by the Bill and confessed by the Demurrer, are these:

Under a Deed of Trust in her favor, with limited trust-powers to her, leaving it doubtful whether she might mortgage the property for her husband's debts, Letitia, the appellant, was interested in a large and very valuable Real Estate in her possession, in Cecil county, in Maryland. Her husband, the co-appellant, was indebted to the appellee, Howard, seven thousand dollars, with interest from 6th April, 1854; and to secure payment in April, 1855, of the debt she, with her Trustee, executed a mortgage of part of her Real Estate to Howard. Soon after the mortgage-debt fell due, Howard proposed to the appellants that an amicable Bill should be filed and a Decree passed, upon assent of the appellants, for sale of the mortgaged estate, but the sale to be made only ultimately as might be desired by the parties concerned, or if it should become unavoidable; the proposal being enforced by the consideration, urged by Howard, that any sale eventually to be made could be effected more advantageously under a Decree than by Mrs. Randel directly. Persuaded by such friendly assurances, she and her husband acceded to the request of Howard, and, waiving the defences open to her under the Trust-Deed of the Estate, as to her being privileged to mortgage, and as to the consequent inoperativeness of the mortgage, she, her husband uniting, filed her answer to the proposed amicable Bill that was filed, and a Decree was passed for sale of the property to pay the mortgage-debt, and also, (by consent included) another debt of Mr. Randel, of $608, and interest from 9th October, 1855. The Decree allowed time to 9th October, 1856, to pay the

mortgage-debt, or bring the amount into Court. In April of that year, under specific terms of equitable concession in your Oratrix's behalf, it was agreed between her and Howard, and, as an immediate object, to counteract a fraud against your Oratrix, involving the possession of part of the mortgaged land, that a sale should take place without delay for the 9th October, 1856. The terms thus agreed were, that Howard should become purchaser at the sale, but really should hold the land only as a security for the decreed indebtment, and that on satisfying that, the property should enure to Mrs. Randel, according to the Trust under which she held her original title. A sale on the faith of this agreement, was advertised under the Decree for the 13th June, 1856, but was deferred to 14th October, 1856, in consequence of an intervening Injunction obtained by the party attempting the fraud just alluded to. A sale at the last date took place; and Howard *was the only bidder*, and became purchaser of the mortgaged Estate, (sold in one body of more than 800 acres,) at the sum of seventeen thousand dollars—an amount far below the true and available value of the property, but without a bid to exceed it (not only because the land was sold in one mass so large) but because of its being understood that the sale was meant to be only formal and not to divest in effect the Estate of Mrs. Randel.

On the sale being thus made, Howard solicited of the appellants to interpose no objections to it, but to allow the Court to ratify it, reiterating his terms and agreement that Mrs. Randel was the virtual *cestuy que trust* of the land, as already particularised, and as a further consideration for a permitted ratification, stipulating that the indebtment, on satisfying which the land should result to Mrs. Randel, should be payable by instalments, the first to be of $4,000, to be paid on 16th December, 1856; and that on default of payment of any instalment, only so much of the land should be sold as might be needed for paying the instalment; and that the property should be sold in parcels from the East end of the tract, and according to a plat for the sale to be made by the appellant, John Randel. Mrs. Randel, under this arrangement, with the super-added terms, ensuring to her her Trust-property notwithstanding the desired ratification of the sale under the Decree, acceded, along with her husband, to the request of Howard, and allowed the sale to be ratified, forbearing objections that would have prevented the ratification, founded on the low price, the selling in a body instead of in parcels, and the requiring payment to be made of all the purchase-money on the day of sale, in place of payment by instalments.

The appellants were in possession, at this period as before, of the land, but now were prevailed upon by the counsel of Howard, to enter into an

agreement of renting, for a small nominal rent, for a year, of the property upon the plea, that it was necessary to make their occupation conform to the ostensible title of the purchaser under the Decree.

After Howard had, by all these steps, and these apparent implications of Mrs. Randel, involved her in an ostensible assurance of title in his behalf, he proceeded to act as if he were absolute owner, without any equitable interest abiding in Mrs. Randel, and as if, too, he had in fact, satisfied, (in account of his mortgage-claim and otherwise,) the whole purchase debt of seventeen thousand dollars, while, in fact, the whole of his mortgage-claim did not exceed thirteen thousand, five hundred dollars. By this pretension, he meant to increase the burden of Mrs. Randel, (the payment of the actual, and only the, mortgage indebtment,) which was the condition of her having her title to the land revested. The amount of the true credits in favor of Howard, upon the audit in the case of the sale, left for Mrs. Randel, (assuming the sale to be absolute and the purchase to be carried out literally by Howard,) an excess of upwards of $3,500. This amount, to make Mrs. Randel pay for her equitable estate to be re-assured to her, $17,000, Howard pretended to absorb in charges for his alleged trouble, and expenses in relation to the mortgage-claim, and in various claims against Mr. Randel. To consummate this process of imposing on Mrs. Randel this augmented liability, aggravated so as to make her redemption of her property almost impracticable, while he might be saved the payment to her of her just demand if he retained the property at $17,000, he extorted Mrs. Randel's and her husband's signature, to an agreement (a copy of which, marked H,) is exhibited with the Bill, and which is shown at p. 7 of the Record. This paper he peremptorily and with menace, pressed upon the parties, and, under the alarm and distress of Mrs. Randel, she and Mr. Randel executed it. It is embodied in the Bill, as one of the wrongs inflicted on Mrs. Randel; and to be vacated in the relief to be decreed. This paper sets out with the admission of Howard, that *he is bound to re-convey the property* to Mrs. Randel, and John M. Randel, the Trustee of Mrs. Randel; stating that he became purchaser of it at $17,000, and that the price for re-conveyance is *said* sum of $17,000, which, of course, would concede to Mrs. Randel her dues upon the audit, the difference between the amount of the mortgage-debt and incidental charges of the case, and the $17,000. To extinguish that difference the agreement gives a list of debts of John Randel to be deducted from the $17,000, and closes with a sweeping appropriation of all the *residue* of Mrs. Randel's dues to Howard, *in consideration of the trouble and expenses he has incurred in and about the said [mortgaged] real estate, since he purchased it, and in consideration of his re-conveyance of the said real estate to the said Lititia M. Randel*

and John M. Randel, her son. Howard, a few days afterwards, endeavored, by means as violent as were used with this first paper, to extort the signatures of the parties to a second agreement, (Exhibit I with the Bill at page 9 of the Record,) but his attempt did not succeed. This second paper specifies the same claims as payable, to make up the seventeen thousand dollars; but that sum is stated absolutely as the consideration for Mrs. Randel's remitter to her Estate, and not in terms necessarily relative to the audit of the only indebtment, claimable under the Decree, and is admitted as the consideration if it be satisfied in the way prescribed by that second paper. In consequence of the refusal of the parties (Mr. and Mrs. Randel) to yield to this last unjust and rude exaction, the threat attending the demand was cruelly carried into effect, and Mrs. Randel and her husband were turned out of the property, and their furniture sold to pay the costs of an irregular, quasi-legal, process, adopted to dispossess them.

Under these circumstances, and suffering from this oppression and resolved and persevering fraud against her equitable rights, to protect them, Mrs. Randel and her husband filed their Bill in this cause, reciting all the facts now related, and charging the fraudulent design here shown, and charging that Howard is treating for a sale of the property in disregard of Mrs. Randel's equitable interests. The Bill prays that the property may be decreed to be sold, to pay the amount payable by Mrs. Randel, as the consideration for her having the Estate re-vested in her, or that on paying that amount, she may have a re-conveyance of it for her benefit and separate use, and for general relief; and that Howard be restrained from selling, leasing or disposing of the property, as if unconditionally his estate.

The defendant, Howard, demurred to the Bill. For causes of Demurrer the defendant insists:

1. If the Bill shows any cause of complaint it should be heard and determined by only the Circuit Court for Cecil county.

2. The Bill seeks to annul a sale of lands made under a Decree of that Circuit Court, the Bill alleging that the sale was reported to the Court, and finally ratified by it and the proceeds of sale awarded to the persons named in the Bill. These matters and things and the relief prayed with reference to the matters alleged in the Bill, can be reviewed and inquired into only by the Circuit Court for Cecil county, and ought not to be inquired into in the Circuit Court of the United States for Maryland District.

3. The complainants show that the matters charged, and the various frauds in obtaining the several Decrees and Orders of the said Circuit Court for Cecil county, were done and passed in that Court, or by its authority, in a cause where it had full jurisdiction over the parties and said several subject matters; and, therefore, this Court (the Circuit Court of the United States) ought not to inquire into the same.

4. This Court (the United States Circuit Court) ought not to enjoin the acts and doings of the Cecil county Circuit Court, nor interfere with, or enjoin, titles under the same.

It will be seen that every article of this Demurrer assumes a misconception of the Bill. It assumes that the complaint is in derogation of the Decree and action of Cecil Circuit Court, and interferes with the control that belongs to it of the cause in which the Decree was passed, and seeks a relief that lies within that control. It thus imputes a conflict of jurisdiction as invoked by the Bill, a dispossession of the Cecil Court of the case which its jurisdiction has embraced. All this is ideal. No Decree or act of the State Court is gainsayed or impeached, and no attempt is made to annul any such action or mar its effect. No fraud is charged as vitiating the Decree or any proceeding in the train of it. The only fraud that is the ground for our appeal to Equity and is the burden of our grievance, is, that a Decree and a Sale under it are *attempted to be used* against our rights inequitably—12 How. R., 139, Southard *vs.* Russell; 14 Peters, 201, Sprigg *vs.* Bank Mt. Pleasant. It might as well be said that the Deeds whose operation was controlled or directed in those cases were adjudged fraudulent, as to charge this Bill with assailing the Decree here concerned as founded in fraud and to be paralyzed as having no just or legitimate efficacy. On the contrary, our whole claim contemplates and concedes the operativeness of the Decree and of the sale under it, and we claim a conveyance from Howard *as endowed with his title by the Decree and the Sale.* The Decree is undisturbed—and the cognizance and action of the Cecil Court, have been consummated and have definitively gone to the extreme verge of the whole judicial authority, by a ratified sale under the Decree, and the account applying the proceeds of sale. With what that the Court has done does our Bill interfere; and how and where within the limits of the cause in which that Court has thus consummately acted are we in any way, much less most aptly or with peculiar fitness, to attain the relief we ask? Our whole case is in matter and on claim subsequent to all action of that Court, and recurring to that only in the history and deduction of rights and title. A Decree may be a testimonial of title as well as a Deed, and

may thus mingle in the proofs and discussions of a proceeding for title in a Court of Equity. Will it be said that the introduction thus of the Decree supersedes the Jurisdiction of the Court that has the pending case, and refers all action to the Court of the Decree? That would be called preposterous. In no other way, effectively, do we here deal with the Circuit Court's Decree, or involve it in our Bill or our interpretations. In the case of the Union Bank of Georgetown *vs.* Geary, 5 Peters, 99, where the Court granted the Injunction against the Judgment recovered in the Circuit Court of Washington, which this Court made perpetual because the agreement which induced the confession of the Judgment and *regulated the use of the Judgment* was repudiated, the Courts did not determine nor imply that the Judgment was *fraudulently obtained*—but only that a frand called for interference, which consisted *in attempting to use the Judgment in violation of the agreement*. There is a parallel to this case in its merits—and in elucidation of the true relation of our claim to the Decree and action of the Cecil Court. We are not *'reviewing'* the Decree or any Proceedings of that Court. They are in no wise in question, although interwoven, as source of title and detail in the formation of our Equity, with our claim *supervening* that Decree and those Proceedings. In 12 Gill & John. 306, Brooke *vs.* Brooke and others, we have an illustration of this relation to past judicial action, of a claim in a new suit in equity, allied in derivation of right, to that former judicature, but not coming within the purview or internal control and relief of that original cause. There an audit in an Equity case in Prince George's County Court, had appropriated a sum of money to claimants, who were, however, so indefinitely designated, that, the Trustee failing to pay the amount, a suit brought against the securities in the Trustee's bond, failed for the defect of the designation, and for want of means of making the demand upon the Trustee, which is a necessary preliminary for suit on the Trustee-bond. The Bill was filed *in the Court of Chancery* for relief against the sureties, on there giving the adequate identification of the claimants; and the sureties were adjudged answerable. The Bill was entertained in the *Court of Chancery*, although the substratum and historical origin of the case was in *Prince George's County Court*, and the Bill was, of course, acted on as an original Bill, although termed (erroneously as the Court says) in the proceedings, a Supplemental Bill. The Court declares the relation of the case before it, to the original case, as a mere historical connexion, and as furnishing only the *material* of the right and of the proof. There, too, was a more plausible ground than here, for objecting a conflict of jurisdiction, and an interference by the Chancery Court with the appropriate functions of Prince George's County Court, in its first-attached authority, for the Chancery Court was asked to make

See 2 Johns. Ch R 333
[2 Gnd Supp. Ch. Re. 442]

effective, and virtually remedy the inaccuracy of, an order of the County Court; but very properly it was considered, that the County Court had finally disposed of the case under its cognizance, and that the relief sought in Chancery opposed no action of the County Court, and was not within the scope and office of the County Court cause. This independency of the two procedures is the true test for the point, whether there is a collision of jurisdiction such as the Demurrer in this case objects.

Such a principle seems to be adopted by this Court in Bacon *vs.* Shelby, 10 How. 56.—The definitive exhaustion of jurisdiction by decree when enrolled and by the action in the sequel of it, as we have intimated, is so thoroughly recognized in Equity law, that even to impeach the Decree for fraud an *Original* Bill must be filed. Such is the character of the Bill; although, if in the Court of the Decree, it is, with reference to the examination it claims, sometimes termed an *Original* Bill in the nature of a Bill of Review. Mitf. Pl. 94, 112, 114, Ambler R. 229. 1 Mad. Ch. 237. 12 John. R. 535, Monell *vs.* Lawrence. Such a Bill must, of course, be filed in the Court of the Decree when the vacating of the Decree is sought. But there seems no reason why it might not be entertained in another Court of Equity when the form of relief asked is to have the operation or effect of the Decree stayed or intercepted; and this upon the well established position, that a Decree or Judgment is, at least as to immediate parties, to be decreed a nullity if fraudulent, no matter whether by pleading or in testimony brought into the case in another Jurisdiction. The scope of the plea *prer fraudum* against a judgment determines that position. The same principle applies where a Decree or Judgment is originally and technically untainted and regular, and has fraud *reflected* upon it from the unjust and fraudulent use *atteempted* of it. Hence where the effect of such judicial action is to be obviated, no such deference is due to the original tribunal as to limit to it the precedure for relief. In 9 Mary. R. 356, Wilson *vs.* Watts, relief was sought in a case like this, in another Court of Equity than that which passed the Decree attempted to be urjustly availed of; that Decree being of Baltimore County Court, whose constitutional successor was the Superior Court, or the Baltimore County Circuit Court, and the Bill being filed in the Circuit Court for Baltimore City. The Complainant failed—but not on any objection to the selection of the tribunal for the case. One of the Judges (Mr. Eccleston,) was of opinion, and very ably gave the equitable law on the case, that the complainant was entitled to relief—another had scruples as to the operation of the Statute of Frauds in the evidence of the claim, forgetting that parol testimony to show fraud is in such cases in Equity always competent, 2 Gill R. 409, but otherwise deemed the claim sound—and the third strangely considered that an agreement for a Decree modifying its operation in variance from

its literal purport, was an abuse of the Court's jurisdiction; in that respect venturing a novel idea, contradicted by repeated adjudications, and, if there were no other decision, by this Court's determination in the Union Bank of Georgetown *vs.* Geary, already referred to, (5 Peters, 99.) For the effect we have given to the taint or purpose of fraud—and to sanction the view, that a new jurisdiction may act on a Bill which seeks to control the unjust effect or fraudulent use of a Decree or Judgment, we refer to 14 Ves. J. 234; Pickett *vs.* Loggin; 1 Sch. & Lef. 355; Kennedy *vs.* Daley, 5 Gill 277; Mitf. 256; 3 Sumn. R. 600; 5 Mason, 95; 3 Cranch, 307; 8 Simon, 279, Price *vs.* Dewhurst; 1 Greenl. Ev. § 541, 548; 1 Gill 391, Hall *vs* Hall.

These authorities demonstrate that fraud as to a Decree in the Decree or supervening, in obtaining it, or in the use to be made of it, reduces the Decree to a nullity when even collaterally called into testimony or made part of a case, and that the relief sought against the fraud constitutes an independent case, the mere *affinity of the two cases* not limiting Jurisdiction to the Court of the Decree for the grievance to be obviated. The rule is not one of artificial or arbitrary deference, that yields a case to the Court in which originated the case out of which the new case has grown. There must be possible interference of Judicial action in the two cases; the second Jurisdiction revising or counteracting the first one. The principle is governed by the reason of things, and is not exceptional to the primary supreme principle of all Judicature, that to vindicate rights and prevent wrong is the over-ruling object, despite all formalities. The question here is not one even of Judicial comity. How the great aim of doing Justice is without technical stint or fastidious observance pursued, is seen in the cases where foreign Courts have acted, and have had, in English Courts, *the use and effect of that action* restrained or regulated where such application of the Judicial action would work an oppression and a fraud, whether a fraud on collateral agreements attending the Judicial action or otherwise. And such is the Judicial course in Chancery in England, although there the conclusiveness of Foreign Judgments is admitted—(3 Ves. Jr. 182—12 Ves. Jr. 324—1 Y. & Col. 464). The adjudications on this head decide the question have involved; and show that, *ampliare Jurisdictionem*, being a maxim of Justice, one Court will interpose with relief, although it may take its path along the bounds of a prior case in another Court, which is the repository of the *Record facts* recurred to for use in the supervening suit. There is a striking exemplification of this in the case of 3 Ves. Jr. 170, Lord Cranstown *vs.* Johnston, where the Court of Chancery gave relief against the oppressive use of a Judgment (admitted to have been regularly under the local law obtained) in the Island of St. Christopher,

the Court (p. 179) saying, as to the solicited relief, "*I must forget the "name of the Court in which I sit, if I refuse to grant it,*" although it also declares, (p. 182) referring to the legality of the Judgment, "I "admit that according to those laws (of St. Christopher's) a creditor may "do this. To that law he has had recourse and wishes to avail himself "of it"—but the Court proceeds to the testing point of its authority, thus: "the question is whether an English Court will permit such *an "use to be made* of the Law of that Island or any other country. It" [the property sold under the Judgment and bought by the plaintiff in the Judgment,] "is sold *not to satisfy the debt but in order to get the Estate.*" How exact the parallel in the grievance here with that there! It is indeed a precise identity of wrong and oppression. The Court there denounces the use attempted of the Judgment, saying it does so "*without "affecting the Jurisdiction of the* Courts there, or questioning the regu- "larity of the proceedings as in a Court of Law, or saying that this sale "should have been set aside in law or equity *there*," having first taken the distinction acted on repeatedly in the Courts of this country and pointedly in this Court, "that this Court cannot act upon *the Land* [in St. Christopher's] directly but acts upon the conscience of *the person* living here [in England,] and 1 Y. & Col. 464.

In 12 Ves., Jr., 321, the same principle (of 3 Ves., Jr.) is affirmed, but in 12 Ves. Jr. 321, the imputed fraud being denied or unsubstantiated, the Chancellor did not grant the relief. The doctrine of these cases, as to extra-territorial courts, is treated in 2 Spence, Eq. Juris. 10; Jermey Eq., 557. The cases of Jurisdiction entertained *in personam* beyond the Jurisdiction of the Realty on matters *relative* to the Realty illustrate, and are, indeed, authoritative, on the principle we have been maintaining. There is as much reason why *locality* of Jurisdiction should be exclusive, and be yielded to in all Courts out of that sphere, as that such deference should be shown to the Jurisdiction that has chanced to act, and definitively act, in a kindred or preliminary case. And yet the pre-eminence of the Court of the locality is not conceded, unless where title to the Land is directly the issue. The case of Massie *vs.* Watts, 6 Cranch 148—is a leading decision on the subject, in this Court, and shows that where there is no possible collision between the two Jurisdictions, they shall be deemed *concurrent* for the justice, in view, and which is personally due by parties. At page 160, the Court proclaims the true and useful moral of the power, that under this construction it wields: "Upon the authority of these cases," says the Court, "and of others which are to be found in the books, this Court is of opinion, that in a case of fraud, of *trust*, or of *contract*, the Jurisdiction of a Court of Chancery is sustainable, wherever the person be found, although lands not within the Jurisdiction

may be affected by the Decree; the enquiry, therefore, will be, whether this be an unmixed question of title, or a case of fraud, trust, or contract." In the present case, Howard, under the agreement with Mrs. Randel, incidental to the Judicial proceedings, became implicated in a *Trust* of the Land for Mrs. Randel, after acquiring title under the Decree. Such in all such cases is the interpretation put on the relation of the party who has stipulated to give, upon certain terms, the benefit of his Judicial title to another party.

It will be seen that between all Jurisdictions, no matter how related, and in whatever spheres, territorially and politically, one pervading principle has governed to estimate very narrowly the claim of a tribunal to dispossssss the cognizance of another as having had prior control of the subject, or having a local authority. Even as to the co-ordinate action of the Court of Chancery and the Exchequer (in Equity) this strict tenaciousness prevails. A cross-bill in the one or the other will be entertained when the Original Bill is pending in the other Court, and a Bill for foreclosure will be acted on in ~~any~~ one Court while one for redemption is proceeding in the other—Mitf 80, Jeremy Eq. 553. The cases we have presented are of Jurisdictions more clearly impinging each other in the two suits involved than any such cross procedure can be shown here between the United States Court and the Cecil Court—or any obvious appositeness of the Cecil Jurisdiction for our grievance or our rights can be demonstrated.

Let the exception of the Demurrer be put to the practical test in a proceeding for relief. What would be done for us in Cecil Court? Surely nothing could be interposed, by Petition or any sort of Suppletory Bill *in the already decreed case.* We could not get our object by assailing the Decree, because we leave that intact and in full sway—nor could we seek to rescind the Order ratifying the sale. What then would be the available proceeding? Only an Original Bill, as distinct from the decreed case, as the Bill for that Decree is separate and variant from that Original Bill fitted to our relief. Nothing done in the decreed case would be challenged, and nothing *there* is the ground, or contributes to the ground, on which rests the equity of our new proceeding. Is it not evident, then, that, taking our independent course in the new proceeding, we can not be entangled with the second case, nor need any action that is only to be found within the bosom of that case. Why then shall we be dismissed from this United States Court to the Cecil Court—where there is no discord of Judicature between the two Jurisdictions possible in the case, and where one can as independently as the other administer the rights in question? Surely this is a case in which this Court will not lightly, and on less than the clearest want of power to relieve, refuse redress for a con-

fessed wrong of the boldest faithlessness—and deny us restitution of property so sacredly pledged to us. We have endeavored to define the fraud at its true point and stage in the transaction, and recurring to this Court's view in 12 Howard, 139, and 14 Peters, 201, we have fixed the fraud in the attempt to *pervert the Decree and Sale to a use and result, violating the agreement between the parties.* Laying there our premises, we leave undisputed the Decree, the Sale and the Ratification of it—and we ask, whether they shall be made the *instrumentality of fraud*, or shall be controlled in the good faith of the agreements, to which they owe their being. Against such an appeal for protection, must not the burden be cast on our adversary, an avowed delinquent, to most undoubtedly demonstrate his immunity from this Court's action and its animadversion upon the meditated repudiation of his equitable duty? There is no bias for injustice under strained technicalities or exaggerated niceties in weighing Judicial authority, upon which the Defendant, can, in this contest, rely, for shutting against us the Federal Judicature. If we are to be repelled thence, it must be by resistless principle most strictly canvassed in the best sympathy with our grievance.

CHARLES F. MAYER,
Of Counsel for the Appellants.

The printed Record is full of typographic errors — in words and in distribution of sentences. But the Court will find the case substantially presented as I have stated it.

C. F. M.

IN THE

SUPREME COURT OF THE UNITED STATES.

JOHN RANDALL, JR. AND WIFE

vs.

JACOB C. HOWARD.

APPELLEE'S BRIEF.

THE Appellants filed their Bill of Complaint in the Circuit Court of the United States for the District of Maryland, against the Appellee; to which he demurred, and the Court sustained the demurrer.

It appears from the Bill, that Randall and wife, or one of them, were the owners of several pieces of land situate in Cecil County, Maryland. A portion of these lands was mortgaged to Howard, the Appellee, and default having been made on the mortgage, Howard filed his Bill of Complaint in the Circuit Court for Cecil County, Maryland, against the Appellants, for the foreclosure and sale of the mortgaged premises. To this suit the Appellants appeared and a decree was in due course passed for the sale of the land, and appointing a trustee to make the sale. Accordingly, a public sale took place at which Howard, the Appellee in this cause, became the purchaser of the mortgaged property for $17,000.00, which sum exceeded his mortgage debt. The sale was reported to the Cecil Court, and after due notice, was finally ratified. It does not distinctly appear from the Bill whether the proceeds of the sale have been distributed under the Order of the Court. It may, however, be inferred from certain allegations in the Bill, charging that Howard sets up certain claims to the surplus, that the proceeds still remain, as in fact they do, subject to the order and control of the Cecil Court.

This state of matters existing, Randall and Wife, filed in the Circuit Court of the United States for the Maryland District, the Bill of Complaint which is now under consideration. In addition to the facts above enumerated, it embraces a large number of statements and a still larger number of insinuations of fraud and fraudulent devices, and of vague representations and agreements,

alleged to have been made by Howard; in consequence of which it is in part alleged and in part insinuated that he has possessed himself of the property and sets up certain undefined claims against the surplus. The Bill concludes with a prayer that Howard may be restrained from disposing of the property, and that so much of it as may be necessary for the purpose, shall be sold to pay off the mortgage debt according to an alleged understanding had between Randall and Howard prior to Howard's purchase, and that the remainder of the land be conveyed to Mrs. Randall.

The Bill is singularly deficient in certainty and particularity, especially in those parts which relate to the alleged frauds and breaches of faith, on the part of Howard. The allegations are not plain and direct, but vague and augmentative. For instance: it is insinuated in the Bill, that Howard persuaded Randall and wife to assent to the decree in the Cecil Court, and that Mrs. Randall by giving her assent, waived objections which she might have urged against the validity of the mortgage to Howard, on the ground that she had no power, under the deed by which she acquired her title to the land, to execute a mortgage. Yet the deed which the Bill refers to as vesting the title in her, and defining her powers, is actually shewn by the Bill itself to be nearly two years later in date than the mortgage, and strange to say it is not set out, nor any copy of it produced—nor does the Bill profess to set out, either verbatim or according to their legal purport, the various powers vested in Mrs. Randall. There is however a small extract from the deed given in the Bill, which completely does away with the alleged doubt, for it says that among other things Mrs. Randall was empowered at her pleasure to revoke and change the trusts, and was also empowered "to sell at her discretion the said lands"—Now whatever doubt there may be elsewhere, it was long before settled in Maryland, where these lands are situated, that a power to a married woman to sell, gives her a power to mortgage—*Price* vs. *Bingham*, 7 *Harris and Johnson*, 296.

Another remarkable omission, is that the Bill nowhere describes the land which it seeks to affect, except by referring to the books in which the deeds are recorded—This is inexcusable since either the original deeds or certified copies, might have been readily obtained and annexed to the Bill as a part of it.

The Bill then states that a friendly arrangement was entered into to have a sale take place before the time fixed by the decree, at which sale, Howard was to become a nominal or formal purchaser, but in fact to hold the land in secret trust for Mrs. Ran-

dall, this arrangement it is alleged, was made for the purpose of counteracting a fraud, which some third parties were attempting to commit against Mr. and Mrs. Randall—the statements, here again are very vague, and if they have any definite meaning, it would appear that the Complainants persuaded Howard to become a party, to a transaction to defraud these third parties, by covering up and concealing the real ownership of the property—and if this be true, the Appellants are the parties guilty of the fraud, and will not be heard in this Court in seeking to be relieved from its consequences.

This proposed sale, however, was prevented by the third parties alluded to. And the sale at which Howard became the purchaser took place in accordance with the original decree—"the arrangement aforesaid"—the Bill alleging "still continuing between the Complainants and Howard." The statement of what this arrangement was, is extremely vague and loose, and it appears to be entirely without consideration.

After the purchase by Howard, it is alleged that he solicited the Appellants to forbear from objecting to the ratification of the sale, and that an understanding was then had, by which the land was to be held by Howard as security for his debt, which was to be paid off by instalments; and in case of default in the payment of any of the instalments, the land was to be sold in parcels from the East end of the tract, according to a plot to be made by Randall. The Bill states the time when the first instalment was to become payable, according to this understanding; but omits entirely to state when the other instalments were to become due. Nothing is said in the Bill from which it can be inferred that the first or any subsequent instalment was paid or tendered, nor is there any allegation that Randall ever made or attempted to make any plot according to the understanding.

There are numerous charges of other fraudulent practices by Howard subsequent to the ratification of the sale, but there is no date assigned to them in the Bill; the one however, which comes first in order of time, appears from an exhibit filed, to have been a transaction occurring more than eighteen months after Howard purchased, and more than sixteen months after the first instalment, under the alleged understanding, became due; yet the Bill does not allege any excuse for Randall's failure to furnish the plot, nor does it account for the delay or give any explanation of the conduct and transactions between the parties in the meantime.

It is not necessary to repeat or analyze the various frauds alleged to have been perpetrated by Howard subsequent to the ratification of the sale. They are equally as vague and argumen-

tative as those already considered. An examination of the whole Bill will show that the definite statements, if relieved from the mere insinuations which are liberally scattered throughout the Bill, amount in substance to this, that Howard, after having purchased the property at public sale, was solicited by Mrs. Randall to let her have it on the terms on which he had bought it, and that he was willing to do so upon certain conditions which do not appear to have ever been complied with.

This arrangement or understanding or whatever it may be termed was a mere gratuitous favor, conceded by Howard to Mrs. Randall, which she could not have claimed—and neither she nor her husband having come forward to comply with the terms, the transaction was abandoned.

It will be perceived that most of the transactions complained of, occurred in the course of the suit instituted in the Cecil Court, and that the Bill itself shows that it had full and complete jurisdiction over both the subject matter and the parties. Indeed, it may be inferred from sundry allegations in the Bill, that it was at the time the only Court which could entertain the jurisdiction; the lands lie in Cecil County, Howard was a citizen of that County, and the Bill states that Randall and his wife were then living on the property, and had no other home. So that although when this Bill was filed, Randall and wife were or claimed to be citizens of New York, yet when the proceedings in Cecil were instituted, and during the various transactions alleged in the Bill, they were citizens of the State of Maryland.

In the argument the Counsel for the Appellee will contend that the Bill was rightly dismissed.

1. Because the Bill does not set forth such a case as entitles them to relief.

The allegations in a Bill must be specific and particular, and free from ambiguity.

Mitford's Eq. P. 41.

The arrangements and understandings set forth are too vague and uncertain to be specifically enforced; and there is no allegation of any performance by Complainants of the stipulations to be performed on their part, and the arrangements are without consideration, or else founded upon frauds attempted to be perpetrated by Complainants themselves.

Owings *vs.* Wheeler, 1 Md. Ch. D. 123.
Colson *vs.* Thompson, 2 Wheat. 336.
Freeman *vs.* Sedgwick, 6 Gill, 39.

No such trust for Mrs. Randall as is claimed, can arise out of the transactions set forth in the Bill upon the ground of the alleged arrangements or understandings, because they are too vague and uncertain, and are without consideration. Nor, in this case, upon the ground of the fraud alleged, because the U. S. Court cannot entertain that question for the reason assigned under the second head.

2. Because the Bill in this case seeks to inquire into, consider, and pass upon various transactions, had in the progress of the cause in the Circuit Court for Cecil County, which the United States Courts had no authority to entertain.

Story's Eq. P. sec. 712.
Taylor *vs.* Carryl, 20 Howard, 584.
Peck *vs.* Jenness, 7 Howard, 612.
Hagan *vs.* Lucas, 10 Peters, 401.
Ex parte Dorr, 3 Howard, 103.
Wiseall *vs.* Sampson, 14 Howard, 52.
Peale *vs.* Phipps, 14 Howard, 368.
Clark *vs.* Matthews, 12 ~~Howard,~~ 170. Peters
Dunn *vs.* Clark, 8 ~~Howard,~~ 1. Peters
Act of Congress, 1793, ch. 22, sec. 5.
Semms *vs.* Guthrie, 9 Cranch, 25.
Rogers *vs.* Rogers, 1 Paige, 183.
Elliott *vs.* Piersol, 1 Peters, 340.
Vorhees *vs.* Bank U. S. 10 Peters, 473.
2 American L. C. 567. 3d Ed 733. 734
2 Phillips Ev. [47-48]
Cowen & Hill 3 vol Ed.

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